

Exhibit 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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:
BMG RIGHTS MANAGEMENT (US) LLC, :
et al., :
Plaintiffs, :
: Case No. 1:14-cv-1611
vs. :
: :
COX ENTERPRISES, INC., et al., :
Defendants. :
-----:

VOLUME 7 (A.M. portion)

TRIAL TRANSCRIPT

December 10, 2015

Before: Liam O'Grady, USDC Judge

And a Jury

1382

1 Q. Can you please explain what each column here represents.

2 A. Yes, yes, I can. Each column shows the number of notices
3 we received per customer. So that the first column, which has
4 51,000 in it, are customers that received one notice and only
5 one notice.

6 And the second column, which says 17,000, shows those
7 customers in the group that received two notices. So that was
8 about 17,000 in the time frame that we were dealing with.

9 And so on, it goes on.

10 Q. Now, the numbers in the middle column are 2 and 3, is that
11 because two notices meant that the customer had received one
12 notice after the first was held?

13 A. I'm not sure I am answering your question.

14 Q. I'm sorry. That's the second step.

15 A. Okay.

16 Q. I shouldn't be asking questions that way anyway. Can you
17 please explain what the numbers are in the second column.

18 A. Okay. The second column -- the first -- the first column
19 is 50,000, and it goes down over time.

20 And then the second column are numbers of notices
21 received.

22 And then we broke that down into percentages of the
23 customers that it stopped at at that level.

24 Q. And what is the language below, what does that mean
25 according to your understanding?

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1 A. Well, it was a summary of the findings from our review of
2 the block that we pulled. And what we found was really pretty
3 interesting. That particular line says 96 percent of the
4 customers that received notices never got more than five.

5 And so, that would have been in the step in our
6 process about where they were receiving these walled garden
7 notices.

8 Q. Can we turn to the next page of the presentation.

9 A. Sure, yes.

10 Q. Can you please explain that page.

11 A. Yes. This is the same material as on the previous page in
12 terms of the chart, but the language that I used for this page,
13 and you will see there, and it's to highlight the fact that
14 over half the customers never got more than one notice. And
15 that meant that we had never actually even contacted many of
16 those customers -- most of those customers about the issue at
17 all at that point.

18 You can draw some conclusions from that. It may be
19 that if the notices were valid, the customer might have been
20 experimenting. It could have also been mistakes in the
21 computer programs that were being used by the copyright holders
22 to send us notices.

23 Q. What are some of the different causes that you understand
24 exist for persons to make complaints against -- copyright
25 complaints against users?

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VOLUME 9 (P.M. portion)

TRIAL TRANSCRIPT

December 15, 2015

Before: Liam O'Grady, USDC Judge

And a Jury

2019

1 is answering a different question now, and I am going to allow
2 him to answer the question.

3 THE WITNESS: I am sorry. Could you repeat the
4 question?

5 BY MR. ALLAN: (Continuing)

6 Q. What is your understanding of what happened to these other
7 notices, the 92 percent of these notices?

8 THE COURT: If you have one.

9 Q. If you have one.

10 A. They were ignored.

11 Q. How was it that Cox was able to ignore so many of these
12 notices?

13 A. Their system was configured to deliberately do that. They
14 put enough hurdles in there that you could not get through the
15 other end with these notices, or at least that's my evaluation
16 based upon looking at the documents, the materials, and the
17 data.

18 Q. Thank you. You indicated you had reviewed some
19 deposition or -- sorry, some trial testimony in this case?

20 A. Yes, I have.

21 Q. Did you review Mr. Cadenhead's testimony?

22 A. Yes, I did.

23 Q. Are you aware of any testimony he gave concerning the fact
24 that he believed that his system, that this system was
25 effective?

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1 A. Yes, I saw that.

2 Q. What was your -- what do you recall of that testimony?

3 A. I recall he said something to the amount of 96 percent
4 effective, something in that range, if I recall the number.

5 And that was in his testimony a week ago.

6 Q. Very good. Actually, before we go to that, Karl, if you
7 could pull these out.

8 These numbers in the far right column, Dr. McGarty,
9 are they all fairly consistent in terms of the percentages of
10 notices that Cox didn't do anything with?

11 A. On average it looks like the number is 90, almost
12 90 percent are sort of disregarded.

13 Q. Very good. Could we pull up what I believe is in
14 evidence, DTX 141, please, Karl. If we could shoot over to
15 number 14 of that, please.

16 A. I am sorry?

17 Q. It's number DTX 141, Dr. McGarty.

18 A. I have that. And page --

19 Q. It is page number 14.

20 A. -- 14. Okay. I have that. Thank you.

21 Q. And do you recall in your review of the testimony
22 Mr. Cadenhead talking about this slide?

23 A. Yes, I do.

24 Q. And what's your understanding of Mr. Cadenhead's testimony
25 on this?

2021

1 A. My understanding is he made a statement that it's
2 96 percent effective. But when I look at the numbers that were
3 provided to me in the Cox interrogatories, which as an
4 interrogatory I can rely upon those numbers because that was
5 the representation made by Cox, I'm getting the impression that
6 roughly 90 percent of the notices are just outright ignored.

7 So I have serious concerns as to the validity of this
8 number.

9 Q. So do you agree with Mr. Cadenhead that the system is
10 96 percent effective at reducing infringement?

11 A. There is no basis -- it flies in the face of the numbers
12 that I have before me that were provided by Cox over and over
13 again, over a long period of time. And there is no source or
14 critical references as to where this information ever came
15 from. So it just appears.

16 Q. So are you aware of any source material in your review of
17 any of the records that support these figures?

18 A. Support Mr. Cadenhead's representation?

19 Q. Correct.

20 A. I have not been able to find any information.

21 Q. And why is it that there would be a disconnect? Why is it
22 that Mr. Cadenhead's answers or view of the effectiveness of
23 the system can't be accurate given the interrogatory answers?

24 MR. BUCKLEY: Leading.

25 THE COURT: It is leading.